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11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,
15 Plaintiff,
16 v.
17 JOHNATHAN BUMA
18 Defendant.

No. 8:25-cr-00058-JVS

**GOVERNMENT'S NOTICE OF INTENT TO
INVOKE THE CLASSIFIED
INFORMATION PROCEDURES ACT
("CIPA") AND MOTION TO DESIGNATE
CLASSIFIED INFORMATION SECURITY
OFFICER ("CISO")**

21 Plaintiff United States of America, by and through its counsel
22 of record, the United States Attorney for the Central District of
23 California, Assistant United States Attorney David T. Ryan, and
24 National Security Division Trial Attorney Menno Goedman, hereby
25 informs the Court and defendant JOHNATHAN BUMA ("defendant"), by and
26 through his counsel of record, of the applicability of the Classified
27 Information Procedures Act, 18 U.S.C. App. 3 ("CIPA"), to issues
28 relating to classified information that may arise before trial. The

1 government provides such notice pursuant to 18 U.S.C. App. 3, § 2.
2 In addition, the government respectfully moves this Court to
3 designate a Classified Information Security Officer ("CISO") for this
4 case.

5 INTRODUCTION

6 The government anticipates that, during the course of this
7 prosecution, it will need to (1) file a motion to withhold certain
8 classified information from discovery pursuant to Section 4 of the
9 Classified Information Procedures Act ("CIPA"), (2) work with the
10 CISO and the defense to obtain security clearance/s for defense
11 counsel, (3) provide classified discovery to the defense, (4) seek to
12 enter a classified information protective order pursuant to CIPA
13 Section 3, and (5) potentially use classified information during
14 trial. In anticipation of such proceedings, the government is filing
15 this notice to inform the Court and the defense of its intent to
16 invoke CIPA in this case. As discussed herein, Section 2 of CIPA
17 permits the United States to move for a pretrial hearing to consider
18 matters relating to classified information. While the government
19 anticipates that such a hearing may prove appropriate in this case,
20 the government is not requesting the Court to set a date for the
21 hearing at this time. Instead, the United States will request such a
22 hearing at a later date if and when the relevant issues become ripe
23 for the Court's consideration.

24 CIPA PROCEDURAL FRAMEWORK

25 CIPA mandates several protocols for protecting classified
26 information in criminal proceedings. "Classified information," as
27 referred to in CIPA, includes "any information or material that has
28 been determined by the United States Government pursuant to an

Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security.” 18 U.S.C. § App. 3, § 1(a). “CIPA does not expand or restrict established principles of discovery and does not have a substantive impact on the admissibility of probative evidence.” United States v. Sedaghaty, 728 F.3d 885, 903 (9th Cir. 2013) (citations omitted). Essentially, CIPA is “a procedural tool for a court to address the relevance of classified information before it may be introduced.” United States v. Marzook, 412 F. Supp. 2d 913, 917-18 (N.D. Ill. 2006) (citing United States v. Dumeisi, 424 F.3d 566, 578 (7th Cir. 2005)); see also United States v. Sarkissian, 841 F.2d 959, 965 (9th Cir. 1988) (“CIPA creates a pre-trial procedure for ruling upon the admissibility of classified information.”). CIPA’s fundamental purpose is to “protect[] and restrict[] the discovery of classified information in a way that does not impair the defendant’s right to a fair trial.” United States v. O’Hara, 301 F.3d 563, 568 (7th Cir. 2002).

A. Pretrial Conference

Section 2 of CIPA provides that “[a]t any time after the filing of the indictment or information, any party may move for a pretrial conference to consider matters relating to classified information that may arise in connection with the prosecution.” 18 U.S.C. App. 3, § 2. After such a motion is filed, § 2 mandates that the district court “shall promptly hold a pretrial conference to establish the timing of requests for discovery, the provision of notice required by Section 5 of [CIPA], and the initiation of the procedure established by Section 6 of [CIPA].” Id. The Section 2 pretrial conference is not a conference to address or resolve substantive issues concerning

1 the use of classified information. See S. Rep. No 96-823, at 5-6
2 (1980), 1980 U.S.C.C.A.N. 4294, 4298-99.¹

3 The government is not moving for such a pretrial conference at
4 this time but may do so in the future.

5 **B. Protective Orders for Classified Information**

6 Section 3 of CIPA requires the court, upon the request of the
7 government, to issue an order "to protect against the disclosure of
8 any classified information disclosed by the United States to any
9 defendant in any criminal case. . . ." In addition to prohibiting
10 such disclosure, protective orders issued under CIPA generally set
11 forth rules for all parties governing the use and storage of
12 classified information.

13 Here, the government anticipates disclosing classified
14 information to defense counsel in this case and will seek entry of a
15 protective order pursuant to CIPA Section 3.

16 **C. Protection of Classified Information During Discovery**

17 Section 4 of CIPA authorizes the district court "upon a
18 sufficient showing" to deny or otherwise restrict discovery by the
19 defendant of classified documents and information belonging to the
20 United States. 18 U.S.C. App. 3 at § 4; see, e.g., United States v.
21 Sedaghaty, 728 F.3d 885, 904 (9th Cir. 2013); United States v. Rezaq,
22 134 F.3d 1121, 1142 (D.C. Cir. 1998). Similarly, the Federal Rules
23 of Criminal Procedure provide, in pertinent part, that "[u]pon a
24 sufficient showing," a district court: "may, for good cause, deny,
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26
27 ¹ Indeed, to foster open discussions at the pretrial conference,
28 § 2 provides that no admission made by the defendant or his or her
attorney at the pretrial conference may be used against the defendant
unless the admission is in writing and signed by both the defendant
and his or her attorney. 18 U.S.C. App. 3, § 2.

1 restrict, or defer discovery or inspection, or grant other
2 appropriate relief." Fed. R. Crim. P. 16(d)(1). The legislative
3 history of CIPA makes clear that Section 4 was intended to clarify
4 the district court's power under Rule 16(d)(1) to deny or restrict
5 discovery in order to protect national security. See S. Rep. No. 96-
6 823 at 6, 1980 U.S.C.C.A.N. at 4299-4300; see also United States v.
7 Pringle, 751 F.2d 419, 427 (1st Cir. 1984).

8 Accordingly, pursuant to CIPA Section 4, district courts have
9 the opportunity to assess whether specified items of classified
10 information should be disclosed. Section 4 provides, in pertinent
11 part, that a district court:

12 upon a sufficient showing, may authorize the United States
13 to delete specified items of classified information from
14 documents to be made available to the defendant through
15 discovery under the Federal Rules of Criminal Procedure, to
16 substitute a summary of the information for such classified
17 documents, or to substitute a statement admitting relevant
18 facts that the classified information would tend to prove.
19 The court may permit the United States to make a request
20 for such authorization in the form of a written statement
21 to be inspected by the court alone.

22 18 U.S.C. App. 3 at § 4. In essence, Section 4 allows the government
23 to request that the court review, ex parte and in camera, classified
24 information to determine whether it is discoverable under Rule 16,
25 Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405
26 U.S. 150 (1972), or the Jencks Act, and to protect such classified
27 information from disclosure through various means if it is
28 discoverable.² See United States v. Libby, 429 F. Supp. 2d 18, 21-22

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27 ² In determining whether classified information provided to a
28 court under CIPA is relevant and potentially discoverable, it is
appropriate for a court to meet with government counsel ex parte to
consider the matter. See United States v. Mejia, 448 F.3d 436, 457
(D.C. Cir. 2006); Libby, 429 F. Supp. 2d at 24-25.

1 (D.D.C. Apr. 5, 2006) (amended by United States v. Libby, 429 F.
2 Supp. 2d 46, 47 (D.D.C. May 3, 2006)); see also United States v.
3 Klimavicius-Viloria, 144 F.3d 1249, 1261-62 (9th Cir. 1998); Rezaq,
4 134 F.3d at 1142; United States v. Yunis, 867 F.2d 617, 619-625 (D.C.
5 Cir. 1989); Pringle, 751 F.2d at 427-28.

6 Under CIPA Section 4, a district court has the authority to
7 withhold disclosure of classified information if it determines that
8 the information is not "relevant and helpful to the defense of an
9 accused." Klimavicius-Viloria, 144 F.3d at 1261 (internal quotation
10 and citation omitted); see also United States v. Shih, 73 F.4th 1077,
11 1102 (9th Cir. 2023) (quoting Sedaghaty, 728 F.3d at 904)); United
12 States v. Amawi, 695 F.3d 457, 469-70 (6th Cir. 2012); see also
13 Yunis, 867 F.2d at 623 ("[A] defendant seeking classified information
14 . . . is entitled only to information that is at least 'helpful to
15 the defense of [the] accused.'" (quoting Roviaro v. United States,
16 353 U.S. 53, 60-61 (1957))). "Under this [relevant and helpful]
17 test, information meets the standard for disclosure 'only if there is
18 a reasonable probability that, had the evidence been disclosed to the
19 defense, the result of the proceeding would have been different.'" Klimavicius-Viloria, 144 F.3d at 1261 (quoting United States v.
20 Bagley, 473 U.S. 667, 682 (1985)).

22 CIPA Section 4 also provides, similar to Rule 16(d)(1), that the
23 government may demonstrate that the use of an alternative discovery
24 procedure—such as deletion or substitution—is warranted. CIPA
25 further specifically provides that the government may make this
26 showing in camera and ex parte. 18 U.S.C. App. 3, § 4; see Amawi,
27 695 F.3d at 472 ("[E]very court that has considered this issue has
28 held that CIPA permits ex parte hearings."); United States v. Hanna,

1 661 F.3d 271, 295 (6th Cir. 2011) ("This court has already stated
2 that CIPA 'permits the government to have the trial court examine
3 classified information in camera and ex parte and determine whether
4 it is necessary for the defense.'" (quoting United States v. Smith,
5 899 F.2d 564, 565 n.1 (6th Cir. 1990))); see also Shih, 73 F.4th at
6 1102; United States v. Abu-Jihaad, 630 F.3d 102, 140 (2d Cir. 2010);
7 Aref, 533 F.3d at 81; Yunis, 867 F.2d at 622-23; Sarkissian, 841 F.2d
8 at 965.

9 A security clearance at a given level is not sufficient to
10 entitle any individual to access or receive national security
11 information classified at that level. Rather, in addition to
12 receiving a clearance after a favorable determination of eligibility
13 and execution of a non-disclosure agreement, an individual must have
14 a "need to know" the classified information at issue. See Exec.
15 Order 13526 § 4.1(a) (3).

16 Likewise, while the defendant may be entitled to notice when the
17 government initiates CIPA proceedings under Section 4 or 6, there is
18 "no due process right to receive a description of materials in the
19 government's possession that are not discoverable." Sedaghaty, 728
20 F.3d at 909 (citing United States v. Mejia, 448 F.3d 436, 458 (D.C.
21 Cir. 2006) (noting that, in the context of CIPA, as in other
22 discovery in criminal cases, defendant is "'not entitled to access to
23 any of the evidence reviewed by the court . . . to assist in his
24 argument' that it should be disclosed" (citation omitted))). Indeed,
25 a district court considering a motion to withhold classified
26 information "must first determine whether the material in dispute is
27 discoverable." Hanna, 661 F.3d at 295; see Sedaghaty, 728 F.3d at
28 904 ("[A] district court must first determine whether . . . the

1 information at issue is discoverable at all."). Only if the
2 information is discoverable must the court then examine whether it is
3 also relevant and helpful to the defense. Sedaghaty, 728 F.3d at
4 904. A defendant, however, may be permitted to file his own ex parte
5 submission outlining his theory of the defense to aid the court in
6 the review of any classified materials. See id. at 906 n.10; see
7 also United States v. Abdul-Latif, CR11-0228JLR, Dkt. 87 (Order
8 Granting Government's In Camera, Ex Parte Motion) (W.D. Wash. 2012).

9 **D. Procedures for Classified Information Possessed by a Defendant**

10 In the event that a defendant reasonably expects to disclose or
11 cause the disclosure of classified information, Sections 5 and 6 of
12 CIPA apply. See, e.g., United States v. Renzi, 769 F.3d 731, 750-51
13 (9th Cir. 2014); United States v. Baptista-Rodriguez, 17 F.3d 1354,
14 1363 (11th Cir. 1994); United States v. Collins, 720 F.2d 1195, 1199-
15 1200 (11th Cir. 1983). Section 5 requires the defendant to provide
16 timely written notice to the court and the government describing any
17 classified information that he reasonably expects to disclose. See
18 18 U.S.C. App. 3, § 5(a). Notification must take place "within the
19 time specified by the court, or where no time is specified, within
20 thirty days prior to trial." Id. Although the description of the
21 classified information may be brief, it must be particularized and
22 set forth the specific classified information that the defendant
23 reasonably believes to be necessary to his defense. See Collins, 720
24 F.2d at 1199. The defendant must provide formal notice under § 5
25 even if the government believes or knows that the defendant may
26 assert a defense involving classified information. See United States
27 v. Badia, 827 F.2d 1458, 1465-66 (11th Cir. 1987).

1 Section 5 specifically prohibits a defendant from disclosing any
2 classified information in a trial or pretrial proceeding until such
3 notice has been given, the government has had the opportunity to seek
4 a determination pursuant to § 6, and any appeal by the government
5 under § 7 has been decided or the time for filing an appeal has
6 expired. 18 U.S.C. App. 3, § 5(a). If the defendant fails to
7 provide the requisite pretrial notice, then the court may preclude
8 disclosure of any classified information not made the subject of
9 notification, and may prohibit the defendant from examining any
10 witness with respect to such information. Id. at § 5(b).

11 Section 6 describes the procedures by which the court shall,
12 upon request by the United States, conduct a hearing to make
13 determinations of use, relevance, or admissibility of classified
14 information. 18 U.S.C. App. 3, § 6. Section 7 sets forth the United
15 States's exclusive right to seek an interlocutory appeal of a
16 "decision or order authorizing the disclosure of classified
17 information, imposing sanctions for nondisclosure of classified
18 information, or refusing a protective order sought by the United
19 States to prevent the disclosure of classified information." 18
20 U.S.C. App. 3, § 7(a).

21 **E. Procedures Governing the Introduction of Classified Information**
22 **at Pretrial Proceedings or Trial**

23 Section 8 of CIPA prescribes additional protections and
24 procedures governing the introduction of classified information into
25 evidence. Section 8(a) provides that classified documents may be
26 admitted into evidence without changing their classification status.
27 To prevent "unnecessary disclosure" of classified information,
28 Section 8(b) permits the court to order admission into evidence of

1 only a part of a writing, recording, or photograph, or the entirety
2 of said items with all or part of the classified information
3 contained therein excised, unless fairness requires that the entirety
4 of the relevant item be considered.

5 Section 8(c) of CIPA provides a procedure to address the problem
6 presented at a proceeding when the defendant's counsel asks a
7 question or embarks on a line of inquiry that would require the
8 witness to disclose classified information. S. Rep. No. 96-823 at
9 11, 1980 U.S.C.C.A.N. at 4304. Specifically, under § 8(c), the
10 government may object to any question or line of inquiry that may
11 require the witness to disclose classified information that was not
12 previously held to be admissible. 18 U.S.C. App. 3, § 8(c).
13 Following an objection, the court "shall take such suitable action to
14 determine whether the response is admissible as will safeguard
15 against the compromise of any classified information." Id. In
16 effect, this procedure supplements the notice provision under § 5 and
17 the hearing provision in § 6(a) to cope with situations that cannot
18 be handled effectively by those sections, such as where the defense
19 counsel does not realize that the answer to a given question will
20 reveal classified information. S. Rep. No. 96-823 at 11, 1980
21 U.S.C.C.A.N. at 4304-5.

22 **F. Security Procedures**

23 Section 9 of CIPA requires the Chief Justice of the United
24 States, in consultation with certain executive branch officials, to
25 prescribe rules establishing procedures to protect classified
26 information in the custody of federal courts from unauthorized
27 disclosure. See 18 U.S.C. App. 3 § 9(a). Security procedures
28

1 established pursuant to this provision are codified following Section
2 9 of CIPA.

3 **G. Motion for Designation of a Classified Information Security**
4 **Officer ("CISO")**

5 In anticipation of the issues relating to classified information
6 that may arise in this case, the government hereby requests that the
7 Court designate a CISO pursuant to Section 2 of the Revised Security
8 Procedures established under Pub. L. 96-456, 94 Stat. 2025, by the
9 Chief Justice of the United States and promulgated pursuant to
10 Section 9 of CIPA. That section provides:

11 In any proceeding in a criminal case or appeal therefrom in
12 which classified information is within, or is reasonably
13 expected to be within, the custody of the court, the court
14 will designate a "classified information security officer."
15 The Attorney General or the Department of Justice Security
16 Officer will recommend to the court a person qualified to
17 serve as a classified information security officer. This
individual will be selected from the Litigation Security
Group, Security and Emergency Planning Staff, Department of
Justice, to be detailed to the court to serve in a neutral
capacity.

18 Revised Security Procedures established under Pub. L. 96-456, 94
19 Stat. 2025 § 2. See CIPA, Pub. L. 96-456 § 9, 94 Stat. 2025 (1980)
20 (found in the statutory notes to § 9). Classified Information
21 Security Officers³ designated pursuant to this process are
22 responsible for the security of all classified information in the
23 court's custody and for assisting the court with appropriate security
24 clearances for court staff as well as the handling and storage of any
25

26
27 ³ In the original Security Procedures, the title of the position
28 was "Court Security Officer." In the revised security procedures
promulgated by Chief Justice Roberts, the position is now known as
"Classified Information Security Officer," commonly referred to as a
"CISO."

1 classified materials, including any pleadings or other filings
2 related to CIPA proceedings. Id.

3 As set forth in the attached proposed order, the United States
4 recommends that the Court designate Winfield S. "Scooter" Slade,
5 Supervisory Security Specialist, as the CISO for this case, to
6 perform the duties and responsibilities prescribed for CISOs in the
7 Security Procedures promulgated by the Chief Justice. Mr. Slade is
8 an employee of the Litigation Security Group of the U.S. Department
9 of Justice with demonstrated competence in security matters. The
10 Department of Justice Security Officer will certify that Mr. Slade
11 holds all proper security clearances by separate written
12 correspondence officially nominating Mr. Slade as CISO. The United
13 States further requests that the Court designate the following
14 persons as alternate CISOs, to serve in the event Mr. Slade is
15 unavailable: Jennifer H. Campbell, Daniel O. Hartenstine, Daniella M.
16 Medel, Matthew W. Mullery, William S. Noble, and Harry J. Rucker.
17 Each of these alternate CISOs are also from the Litigation Security
18 Group of the Department of Justice and hold appropriate security
19 clearances.

20 **CONCLUSION**

21 The government hereby provides notice to the Court and counsel
22 of CIPA's applicability to this matter and an outline of CIPA's
23 procedural framework. Although the government is not moving for a
24 § 2 pretrial conference at this time, it may do so in the future, and
25 stands ready to answer any additional questions the Court may have.
26 In addition, for the reasons provided above, the government

27 //

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1 respectfully requests that the Court enter the attached proposed
2 order providing for the designation of a CISO for this case.

3 Dated: June 3, 2025

Respectfully submitted,

4 BILAL A. ESSAYLI
5 United States Attorney

6 /s/

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